

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2015080391

ORDER TO SHOW CAUSE WHY
CASE SHOULD NOT BE DISMISSED

PROCEDURAL BACKGROUND

On August 4, 2015, Student filed a request for due process hearing. Student is represented by his mother. On September 3, 2015, the Office of Administrative Hearings granted the parties' joint request for continuance, setting the prehearing conference for December 7, 2015, and the due process hearing to begin on December 15, 2015.

District filed its prehearing conference statement on December 2, 2015. On December 3, 2015, an OAH staff member telephoned Student's mother because Mother had not filed Student's PHC statement. Mother stated that she would be filing her statement by noon on December 4, 2015. She did not file the statement.

The undersigned Administrative Law Judge attempted to convene the telephonic PHC on December 7, 2015, as scheduled. She was initially unable to contact District or its attorney, Patrick Balucan, but was able to reach Mother. Mother informed the ALJ that she had reached an agreement with District. When asked by the ALJ if the agreement was in writing, Mother stated that she would be able to email it to OAH. The ALJ provided Mother with the electronic mail filing address for OAH (SEFilings@dgs.ca.gov) so that Mother could email proof of the agreement to OAH. The ALJ informed Mother that she would attempt again to reach counsel for District and would call Mother back.

The ALJ then telephoned District again and was able to reach Mr. Balucan. The ALJ attempted to reach Mother on the telephone, but only reached voice mail. She left a message for Mother to immediately contact OAH so that the PHC could proceed. Mr. Balucan then contacted District staff to determine the status of any settlement reached between District and Student. The information he received was that District had provided a proposed settlement agreement to Mother, but that it had not yet received a signed document from her.

The ALJ again attempted to reach Mother at the home telephone number that Mother had earlier answered. She again only reached voice mail. The ALJ left a message again

asking Mother to contact OAH, and telling her that the ALJ was continuing the PHC until 3:30 p.m. that afternoon in an attempt to reach Mother, convene the PHC, and determine the status of the proposed settlement agreement. The ALJ also left a voice mail at the work telephone number of record for Mother.

The ALJ again attempted to reach Mother two times before 3:30 p.m. on December 7. Both times, she only reached voice mail. Therefore, the PHC did not go forward. OAH staff also left a voice mail with Mother on the afternoon of December 7, 2015, informing her that OAH had never received an email transmission of the settlement agreement. Mother has not sent in a copy of the settlement agreement and has not contacted OAH.

APPLICABLE LAW AND DISCUSSION

Under the reauthorized Individuals with Disabilities Education Improvement Act, a hearing must be conducted and a decision rendered within 45 days following a 30-day resolution period, after receipt of Student's due process notice, in the absence of an extension. (See Ed. Code §§ 56502, subd. (f), and 56505, subd. (f)(3).) Given the short time frames applicable to this case, it is critical that parties and their representatives participate in advancing the matter to hearing. Absent receipt of notification from Student withdrawing his request for a hearing or agreeing to dismiss his case, the parties must be prepared for a hearing as currently scheduled, and OAH is obligated to hold a PHC and due process hearing.

If this matter was fully resolved against District, Student must file a written request with OAH asking that the matter be closed. On the other hand, if the case is not resolved and Student desires a hearing on the merit on all issues, the parties must be prepared for a hearing. At this time, OAH has not received any letter or other communication from Student's Mother indicating that the matter should be closed or dismissed. Neither has Mother filed a PHC statement on Student's behalf as required by the scheduling order, as Mother indicated she intended to do.

. Student has not diligently pursued the case as he has failed to file his PHC order. He also has failed to file proof that the case has settled and that he wishes to either seek dismissal of the case or to withdraw it. It is therefore unclear if Student intends to prosecute this matter.

Therefore, the following Order is issued:

1. **Order to Show Cause Re Dismissal of the Case:** Both parties are ordered to appear telephonically on December 11, 2015, at 1:00 p.m. for a telephonic Order to Show Cause conference. **OAH will initiate the telephone call.** At the Order to Show Cause conference, Student must show cause, if any, as to why the above-entitled case should not be dismissed for failure to prosecute it. If Mother fails to appear for the Order to Show Cause

conference, then Student's due process hearing request will be considered abandoned and will be dismissed for failure to prosecute.

2. If Student believes that he has settled the case with District, Mother should provide a copy of the signed settlement to OAH prior to the telephonic hearing on December 11, 2015.

3. If either party wishes to be contacted at a telephone number other than the one listed in the pleadings filed in this case, that party shall provide written notice to OAH of the alternate telephone number by close of business on Thursday, December 10, 2015.

IT IS SO ORDERED.

DATE: December 08, 2015

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings